

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEAN MARC VAN DEN HEUVEL,

Plaintiff,

v.

WALMART SUPER STORE, *et al.*,

Defendants.

Case No. 2:22-cv-00249-TLN-JDP (PS)

ORDER GRANTING PLAINTIFF'S
APPLICATION TO PROCEED *IN FORMA*
PAUPERIS

ECF No. 2

SCREENING ORDER THAT PLAINTIFF:

(1) STAND BY HIS COMPLAINT
SUBJECT TO DISMISSAL, OR

(2) FILE AN AMENDED COMPLAINT

ECF No. 1

THIRTY-DAY DEADLINE

Plaintiff filed a complaint purporting to assert claims against Walmart Super Store and attorney Karen Roberts, together with an application to proceed *in forma pauperis*. His complaint, however, fails to state a claim. I will give plaintiff a chance to amend his complaint before recommending dismissal. I will also grant his application to proceed *in forma pauperis*, ECF No. 2, which makes the showing required by 28 U.S.C. §§ 1915(a)(1) and (2).

Screening and Pleading Requirements

A complaint must contain a short and plain statement that plaintiff is entitled to relief, Fed. R. Civ. P. 8(a)(2), and provide "enough facts to state a claim to relief that is plausible on its

face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc) (citations omitted).

The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). However, “‘a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled.’” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

Analysis

The complaint’s allegations, which are minimal, are difficult to decipher. *See generally* ECF No. 1. Plaintiff appears to allege that the Missouri Flat Walmart Store hosted people impacted by the Caldor Fire in the store’s parking lot. *Id.* at 4. He claims that the El Dorado Sheriff’s Department arrested him for trespassing there and that the Walmart team engaged in wrongful actions that created “solitaire conditions” for one day. *Id.* He also alleges that he did not have “prescribed medication” from his doctors. *Id.*

Plaintiff’s complaint fails to comport with Rule 8’s requirement that it present a short and plain statement of plaintiff’s claims. Fed. R. Civ. P. 8(a). As an initial matter, plaintiff names Karen Roberts as a defendant, but asserts no facts relating to her.¹ Moreover, plaintiff’s

¹ Plaintiff additionally alleges that “District Attorneys Office, Kassie Cardullo, Y. Flores, and Miss Griffiths., VernnPiercve” engaged in “repeated abuses,” but he does not explain these abuses or name these individuals as defendants. ECF No. 1 at 4.

1 allegations against Walmart do not identify any actions taken by Walmart that could support a
2 claim for relief. *See Jones v. Cmty. Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984) (“The
3 plaintiff must allege with at least some degree of particularity overt acts which defendants
4 engaged in that support the plaintiff’s claim.”). Plaintiff must allege with at least some degree of
5 particularity overt acts of defendants that support his claims. *Id.*

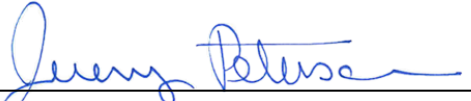
6 I will allow plaintiff a chance to amend his complaint before recommending that this
7 action be dismissed. If plaintiff decides to file an amended complaint, the amended complaint
8 will supersede the current complaint. *See Lacey v. Maricopa Cnty.*, 693 F. 3d 896, 907 n.1 (9th
9 Cir. 2012) (en banc). This means that the amended complaint will need to be complete on its face
10 without reference to the prior pleading. *See* E.D. Cal. Local Rule 220. Once an amended
11 complaint is filed, the current complaint no longer serves any function. Therefore, in an amended
12 complaint, as in an original complaint, plaintiff will need to assert each claim and allege each
13 defendant’s involvement in sufficient detail. The amended complaint should be titled “Amended
14 Complaint” and refer to the appropriate case number. If plaintiff does not file an amended
15 complaint, I will recommend that this action be dismissed.

16 Accordingly, it is hereby ORDERED that:

- 17 1. Plaintiff’s request for leave to proceed *in forma pauperis*, ECF No. 2, is granted.
- 18 2. Within thirty days from the service of this order, plaintiff must either file an
19 amended complaint or advise the court he wishes to stand by his current complaint. If he selects
20 the latter option, I will recommend that this action be dismissed.
- 21 3. Failure to comply with this order will result in the dismissal of this action.
- 22 4. The Clerk of Court is directed to send plaintiff a new form complaint.

23 IT IS SO ORDERED.
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25 Dated: December 21, 2022


26 JEREMY D. PETERSON
27 UNITED STATES MAGISTRATE JUDGE
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